

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1328 of 2019

In

Civil Writ Jurisdiction Case No.13012 of 2014

Ajay Kumar Madhesiya, Son of Kishori Lal Maddhesiya, Resident of Deoria Khas, Ward No. 6, Near Bhagwan Chowk, District-Deoria (UP) Working as Peon (Padchar), Office of the District and Sessions Judge, Saran (Bihar).

... .. Appellant/s

Versus

1. The State of Bihar through its Principal Secretary, Government of Bihar, Patna.
2. The District and Sessions Judge, Chapra (Saran).
3. The Registrar, Civil Courts, Chapra (Saran).
4. The Patna High Court through its Registrar General.
5. Mukesh Kumar, Son of Sri Chait Rai, Resident of Village-Sardha, P.O.- Sardha, P.S. Chapra Muffassil, District-Saran at Chapra.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Ms. Nivedita Nirvikar, Sr. Adv. Mr. Vishal Vikram Rana, Adv. Ms. Kumari Shalini, Adv.
For the High Court	:	Mr. Piyush Lall, Adv.
For the State	:	Mr. Gyan Prakash Jha, GA-7

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 07-04-2023

Heard Ms. Nivedita Nirvikar, learned senior advocate for the appellant and Mr. Piyush Lall, learned advocate for the High Court.

The appellant has questioned the judgment dated 20.09.2019 passed in C.W.J.C. No. 13012 of 2014



by the learned single Judge of this Court whereby his appointment has been cancelled and in his place, one Mukesh Kumar/respondent no.5 has been directed to be appointed against an advertisement for appointment on Class-IV post in the judgeship of Saran at Chapra dated 28.04.2021. In the advertisement, the percentage of reservation for various Classes was declared and for the Backward Class, to which category appellant belonged, was given 12% reservation.

The respondent no.5/writ petitioner was not selected as the appellant had been placed at serial no.1 in the Backward Class Category having obtained 21 marks. Under the directions of the High Court, a wait list but was prepared with representation of various categories in which the respondent no.5 was placed at serial no.1.

The respondent no.5 was content with his not being employed against the appointment process, referred to above, but when he learnt that the appellant could not have been given the benefit of reservation in Backward Class as he belonged to caste "Kandu" which has been declared a Backward Class only in the State of Uttar Pradesh and not in the State



of Bihar, he approached this Court with a sole plea that the Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1991 (for short the "Reservation Act, 1991"), has been breached which is impermissible in the eyes of law.

It was thus asserted by respondent no.5 that in case the appointment of the appellant was not found to be regular in terms of the Reservation Act, 1991, there was no way in which he should have been allowed to continue, leaving respondent no.5 unemployed.

Before the writ Court, the appellant had argued that the advertisement never specified that the benefit of reservation would be available for and given only to the residents of Bihar.

Ms. Nivedita Nirvikar, learned senior advocate representing the appellant submits that in later/subsequent appointment processes, it is normally specified that the reservation benefit shall be given to the Backward Classes only if they are registered in the State of Bihar. Since the appellant had applied in response to the advertisement without any such specification, he cannot be fastened with the allegation



of any misrepresentation or suppression of basic/particulars. The appellant has been in service of the Civil Court, Saran, on Class-IV posts for the last six and a half years.

The dictionary of the Reservation Act, 1991 defines State to include the Government, the Legislature and the Judiciary of the State of Bihar. The modus of reservation for direct recruitment clearly prescribes that candidates residing out of the State of Bihar would not be accorded benefits of reservation under the Reservation Act, 1991.

The Civil Court Rules of Bihar follows the aforementioned provisions of the Reservation Act, 1991.

Section 17 of the Civil Court Rules clearly provides that only such number of vacancies shall be reserved for the members of Scheduled Castes and Scheduled Tribes and Backward Classes. Other Backward Classes and Physically Handicapped which as per the policy decision of the State of Bihar.

Certain facts are undisputed. The appellant hails from “Kandu” caste which has been listed in the category of Backward Class in the State of Bihar. The appellant has his registration as “Kandu” caste from the State of Uttar Pradesh where he had been residing



from before his employment.

There cannot be any cavil on the declaration of the learned single Judge that the appointment of the appellant was bad; but this Court has been persuaded to get into some other set of facts which was not urged before the learned single Judge. We say so with a disclaimer that even if such grounds would have been made known to the learned single Judge, the verdict then also may not be rendered questionable.

Ms. Nirvikar, has stated on instructions that “Kandu” caste falls in the Extremely Backward Class in the State of Bihar.

This may not *ipso facto* improve the position of the appellant, as he has not been registered in the State of Bihar as an EBC person; rather he had been, before his employment, residing in the State of Uttar Pradesh.

The other fact which has come to our notice is that the appellant has lost all his age to apply for any post in the Government at Class-IV level also and that he had been, without any misrepresentation, working for the last six and a half years.

We do reckon that sympathy has no place in adjudication. Nonetheless, we find from the affidavit



filed by the appellant that many posts under Class-IV category are vacant and no appointment process has been concluded thereafter.

This gives us a small space to explore as to what ought to be done to the appellant when in his place respondent no.5 stands appointed on Class-IV post.

While we were contemplating on the aforesaid issue, Mr. Piyush Lall, learned advocate for the High Court, has pointed it out to us that the Supreme Court in **Binod Kumar Gupta and Others vs. Ram Ashray Mahoto and Others, AIR 2005 SC 2103**, where appointments made in breach of the rules, did not sustain such employment even when the employees had put in more than fifteen years in the service of the concerned judgeship.

After going through the judgment aforesaid, we find that in that case, no advertisement as required by the High Court rules was published. Without adequate notice, no fair opportunity could have been given to others who might have applied. In that aforesaid case, no procedure was followed in the selection process and there had been no explanation as to why the Selection Committee had been by-passed



or that the applicants of yester years were ignored. In that case, singularly because of lack of transparency, the whole appointment process was set aside.

In principle, we do not discount the correctness of the judgment of the learned single Judge in holding the appointment of the appellant to be bad, as it was in breach of the Reservation Act, 1991, which advantage came to respondent no.5 ultimately.

However, the facts noted above, viz. the appellant not having misrepresented in any manner whatsoever, having served the judgeship of Saran for six and a half years and having lost all the age to apply afresh for any government job coupled with the fact that the affidavit of respondent no.4 on the strength of letter from the judgeship indicates that Class-IV posts are still vacant and there being some element of confusion in the advertisement which never disclosed that the reservation would be provided strictly in terms of the Reservation Act, 1991 excluding the Backward Class of other States, which condition finds mentioned in later appointment processes, we are inclined to observe that the Sessions Division at Saran could consider the case of the appellant against the vacancy in General category as a one time measure, without



any precedent.

With the aforementioned observation, the appeal stands disposed of.

(Ashutosh Kumar, J)

(Harish Kumar, J)

rohit/-

AFR/NAFR	AFR
CAV DATE	NA
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